

**Benteler Industries, Inc. and International Union,
United Automobile, Aerospace and Agricultural
Implement Workers of America (UAW),
AFL-CIO. Case 7-CA-37499**

December 13, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

On August 28, 1996, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions and a supporting brief and the Union filed a brief in opposition to the Respondent's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Benteler Industries, Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Thomas W. Doerr, Esq., for the General Counsel.

Darcy L. Dustin, Esq. and Timothy J. Ryan, Esq. (Miller, Johnson, Snell & Cumiskey, PLC), of Grand Rapids, Michigan, for the Respondent.

Michael L. Fayette, Esq. (Pinsky, Smith, Fayette & Hulswit), of Grand Rapids, Michigan, for the Charging Party.

Kenneth Bieber, of Grand Rapids, Michigan, for the International Union.

DECISION

STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. This case was tried in Grand Rapids, Michigan, on March 4 and 5, 1996. A consolidated complaint issued September 22, 1995, on the underlying charges in Cases 7-CA-35487 (filed January 25, 1994), 7-CA-35523 (filed on February 8, 1994), 7-CA-35805 (filed on April 12, 1994), and 7-CA-37499 (filed on July 31, 1995), as amended by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (the Union).¹ The allegations charge the Respondent Benteler In-

dustries, Inc. with numerous violations of Section 8(a)(1) of the Act by threatening employees, coercively interrogating them, and otherwise coercing or restraining them in their union related activities. The allegations against the Company also include violations of Section 8(a)(3) and (1) of the Act by causing the discharge of two employees, Kelly Risner and Tanya Sanchez, and the transfer of Paul Williams, because of their union activities. Finally the complaint alleges a violation of Section 8(a)(5) and (1) of the Act accusing the Company of changing the terms and conditions of employment without bargaining with the Union. The Respondents filed a timely answer in which the jurisdictional allegation was admitted and the allegations of unfair labor practices were all denied.

On the entire record of the case, including my own observations of the demeanor of the witnesses, and after consideration of the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Benteler Industries, Inc., with an office and place of business in Grand Rapids, Michigan, has been engaged in the manufacture and sale of door beams for the various big three car manufacturers. With sales of goods valued in excess of \$50,000 to customers outside the State of Michigan, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. FACTS

In the early part of 1995, the production and maintenance employees at Benteler Industries were faced with a union organizational campaign. Throughout the union drive, the Respondent campaigned against the Union, provided workers with antiunion buttons, and also held a meeting with the employees to voice its opposition. At the same time, the employees were divided among themselves about union representation. The elections were held on February 16 and 17, with a majority voting in favor of the Union. After the election, the Respondent filed objections to the election. Following a hearing and exceptions to the Board, it certified the Union on March 20, 1995. The allegations of this case involve the period of time surrounding this union campaign drive.

The General Counsel's case is based on the testimony of four witnesses, only one of whom, Paul Williams, was a union activist. Two of General Counsel's witnesses were sisters Kelly Risner and Tanya Sanchez, who provided most of the serious accusations against the Company. They and their mother, Vada Risner, were employees in Respondent's door beam department. The fourth member of the Risner family, Larry Risner, and his wife Vada were called by the Respondent as witnesses in this case.

Respondent's management witnesses were Dennis French, plant manager, and Supervisors Cory St. Arnold and Mark Forbes, who disputed the accusations made against them. Respondent's other witnesses were employees, who like the General Counsel's witnesses were employed in the door beam department.

¹ On motion by the General Counsel, Cases 7-CA-35467, 7-CA-35523, and 7-CA-35805 were severed from the instant complaint. The allegations in paragraphs numbered 7 through 11 in the consolidated complaint were deleted as were the corresponding paragraphs in the complaint.

A. *The Alleged 8(a)(1) Violations*

According to Kelly Risner's testimony, Mark Forbes made numerous improper, threatening, and coercive statements towards her throughout her period of employment. Risner recalls one conversation with Forbes in January, in which, "He said that I could not talk to Paul Williams. . . . and Theresa Selkey," and other prounion employees, because "they were going to be the ones to make everybody lose their jobs because they were big union." He also said, according to Risner, that "if they approach me and try to talk to me that I could tell them to fuck off because they were union and I could say anything I wanted to them, because they were union" (Tr. 15.) During another conversation in early February, Risner recalled that Forbes approached her and said that if the union got in that the plant was going to move and it had happened before.

During a conversation in early February, Forbes spoke to both Risner and a fellow employee about an impending strike and said that if the Union got in there would be a strike, and a strike would cause violence; union people like Paul Williams would throw things at their cars and try to stop them from coming to work. (Tr. 18.)

Risner and Sanchez recalled a conversation with Forbes on January 23. Forbes asked them where their antiunion buttons were. Risner replied that they did not have any, and Forbes suggested that they could get them in the foreman's office. According to their testimony, Forbes made similar observations on several occasions before the election.

Risner testified that Forbes approached her after she returned to work following a 4-day absence in February and said that she might lose her job because of her absence from work but that the decision would not be made until after the union election. She also testified a few days before the election, Forbes asked her if anyone "had any concerns for when they were going to vote" and whether she had heard any rumors about how the vote was going to go. She was also asked what people were saying about him.

On February 21, Forbes assigned Risner to work on cell 13. She reported that the two employees in cell 13 refused to train her and that she did not want to work there. Forbes, according to Risner, then said the following (Tr. 27-28):

He said that since it was isolated, that he said Pat could do anything she wanted to me. That he thought that they were a threat to my life and that he wished that they would do something to me.

I then told him that I hoped that they didn't, you know. And he said, no, that I should do something to provoke them to do violence towards me because that's the only way that he could get rid of them. They were protected by the union. And unless they did something to me, then he couldn't get rid of them.

Risner also testified that Forbes prohibited her from talking to union supporters like Paul Williams during conversations on March 8 and April 4. In a similar conversation, Forbes said that speaking to Williams might get her into trouble.

Finally, Forbes is accused of telling Sanchez that she should not volunteer any information to her attorney. This conversation occurred on March 29 prior to the objection hearing. I found Forbes' recollection of the conversation

more reliable. He advised her to answer the questions honestly in response to her remark that she was nervous about the interview. Sanchez' testimony was vague and generally unreliable.

Most of the statements attributed to Forbes and alleged to be violative of Section 8(a)(1) were based on the testimony of Risner. Forbes conceded in his testimony that he had conversations with Risner about the Union from time to time, but that these conversations were usually initiated by Risner and that he never threatened any employees nor made any coercive statements. He testified that Risner informed him that she was opposed to the Union and that she asked to wear antiunion buttons. Forbes admitted speaking to Risner about the plant relocating, but said that he answered her question with the comment that he had no information about that and that he was not employed at the time when the plant had moved in the past. Forbes' testimony impressed me as more plausible and credible than that of Risner. For reasons stated below, I found Risner's testimony to a large extent unreliable and not trustworthy.

B. *Discharges of Kelly Risner and Tanya Sanchez*

Kelly Risner and Tanya (Risner) Sanchez were sisters who worked in the door beam department at Benteler Industries, Inc., since January 1995. Sanchez was discharged on April 7, 1995, after her supervisors, Mark Forbes and Cory St. Arnold, reviewed her probationary employment period and concluded that her employment should be terminated. (Tr. 262.) Kelly quit her job at Benteler approximately 1 month later, on May 9, 1995, and claimed constructive discharge because of the actions and statements made by her supervisor, Mark Forbes. (Tr. 38.)

The record does not show, nor does the Respondent concede, that either of the sisters engaged in union activities while working at the Benteler plants. The sisters did not participate in the February union election, and both admit wearing antiunion buttons on at least a few occasions during the early period of their employment. (Tr. 11, 80.) However, they claim that wearing the antiunion buttons was not their independent choice, but rather a response to their supervisor's requests. (Tr. 12, 80.) Forbes contends that he made no such requests, but instead, merely extended them the opportunity to have and to wear the antiunion buttons if they so desired. (Tr. 329.) Although it is agreed that several conversations surrounding the buttons occurred, the parties differ on who initiated the conversations, each claiming that the other side did.

Aside from their alleged union activity, it is undisputed that from February 6 through 9, 1995, Risner and Sanchez each took 4 consecutive sick leave days. They claimed to have been stricken with the flu virus at the exact same time. (Tr. 19, 105.) On their return to work, both were told by Forbes that their jobs were threatened due to the excessive absences (Tr. 20), but that a decision would not be made until after the elections. (Tr. 20.) Indeed no actions were taken until 2 months later.

1. *Tanya Sanchez*

In addition to the February absences, Sanchez admits to having produced over 900 bad parts, an equivalent of 1 day of work, on March 15, 1995, and receiving a writeup from

her supervisors. (Tr. 92.) On April 7, 1995, at the end of a 90-day probationary period, Mark Forbes and Cory St. Arnold, her supervisors, made the decision to terminate her employment, citing her absenteeism, socializing, and poor performance. (Tr. 262, 345.)

According to Sanchez' testimony, her supervisors did not mention poor performance as reasons for her discharge, but told her that she was not a "factory type worker" and that she "spent too much time talking." (Tr. 91.) One of her supervisors, Cory St. Arnold, specifically testified, "[W]e were concerned about her absenteeism, for one, her wandering around socializing, her ability to make grade parts, make good parts" and "[B]asically we talked to her about her attendance. We told her what our expectations were as a machine operator, her socializing that she had with other people. . . ." (Tr. 263.)

However, St. Arnold conceded that during the period in between the 4 sick days and her firing, Tanya did not miss any work, except for the 1 "ice day" when most workers stayed home (Tr. 265). Moreover, any suggestion that she was not ill at all but had taken a trip to Las Vegas during that sick leave period was not a consideration, as he "took it for granted that she was sick." (Tr. 292.) He also conceded that she did not necessarily socialize any more than her sister, Kelly, but that she wandered around more. (Tr. 274.) When asked whether other employees produced defective parts and whether or not it was an unusual occurrence, St. Arnold testified, "Well, it's going to happen." (Tr. 274.)

Mark Forbes also cited absenteeism as well as socializing for discharging Tanya. (Tr. 345.) Forbes testified (Tr. 345):

We usually do this on 90-day people on their probation, at least discuss are we going to keep them or aren't we. We sat down and discussed the Risners. . . . Cory and myself In the conversation we decided that we would keep Dave and Kelly. And we discussed Tanya and the weaknesses. . . . It was inconsistency running at the robot, absenteeism was a big one. She had a—she liked to socialize. And there were some quality issues that were brought up; we had some quality problems that caused us to take notice.

At the conclusion of Sanchez' probationary period, St. Arnold and Forbes "agreed that [they] weren't comfortable. . . . and that were going to release her." (Tr. 350–351.) At a meeting on April 7, Forbes informed Sanchez that she was discharged.

Finally, according to Forbes' testimony, during the union election period union campaign literature circulated around the plant (Plantation Type Management letter, R. Exh. 1) that targeted Tanya and Kelly Risner for receiving special treatment from management. (Tr. 366.)

2. Kelly Risner

Risner testified that Mark Forbes' continued harassment of her during the month after her sister's discharge caused her to quit her job. In this respect, she testified that Forbes harassed her about prounion clothing and her association with union leaders and coworkers, including Paul Williams. She further claimed that he watched her continuously for periods of up to 15 to 20 minutes. (Tr. 43.) One particular incident relates to Forbes' statement that Risner's production of bad

parts was related to the Union because she "was going to start messing up." (Tr. 34.)

On May 9, 1995, Kelly Risner came into work for what would be her last day at Benteler Industries. She testified that on that morning, she actually had no intention to quit: "I wasn't going to let him push me to quit my job, I liked my job, you know." (Tr. 44.) She further conceded that nothing different from the previous day or month happened that morning. Rather, according to Risner, "That's what the problem was. It wasn't any different, you know. He was on [me] just like he always was and I just can't take a job like that. I couldn't take it." (Tr. 45.) Therefore, Risner contends that her decision to quit was made that day at lunch (Tr. 45): "Well, I was kind of in tears and I just told my mom that I was quitting, so I went over to Cory and I told Cory." She further claims that she told St. Arnold that she was quitting because of Forbes' harassment, but she also told Forbes, who was "only a couple of steps away from me and Cory," that she was going to Las Vegas, because "I didn't want him to think that he got the best of me, that he harassed me to where I would quit. I didn't want him to have the satisfaction that he could do that to me, so I lied and told him that I was going to Vegas." (Tr. 47.)

St. Arnold, Forbes, and various coworkers' descriptions of this scenario differed significantly. First, St. Arnold recalled being informed about Kelly Risner's decision to quit earlier in the morning—at 9 or 10 a.m. rather than at lunchtime. (Tr. 260.) Moreover, he testified that Kelly's original reason for quitting was to go to Las Vegas with her father and sister (Tr. 261), and not because of Forbes' alleged harassment. (Tr. 261.)

According to Patricia DeRuiter, the quality control floor inspector, Kelly had talked about going to Las Vegas not only on that day, but for 2 weeks. (Tr. 186.) Although she admits that during their initial conversation, "[I]t wasn't like a set that she was quitting that day, type of thing." (Tr. 185.) DeRuiter testified that during a later conversation, Kelly in fact indicated that she was leaving that day or the next with her father and sister to go Las Vegas. (Tr. 189.) Moreover, DeRuiter testified that Kelly was not crying but appeared "quit[e] happy" after quitting. (Tr. 189.)

One of Kelly Risner's fellow employees, Noba Reynolds, agreed in her testimony that the purpose of Risner's decision to quit was to go to Las Vegas. Conceding that she overheard "bits and pieces" of the conversation of the Risner family at lunchtime, Reynolds also testified that Risner specifically told her that she was going to Las Vegas "that afternoon." (Tr. 231.) During this conversation, Risner appeared normal and was not crying. (Tr. 232.)

Neither DeRuiter nor Reynolds ever observed Forbes harassing Risner for any union activity. According to DeRuiter, Risner not only wore antiunion buttons, but she even asked her for the buttons on various occasions. (Tr. 183.) In addition, she observed Risner engage in a hostile confrontation with the union activist Paul Williams near the election time. (Tr. 180.)

Finally, Forbes denied all of Kelly's accusations regarding the constructive discharge. He testified that he learned of Kelly's decision to quit, not at lunchtime, but between 9:30 and 10 a.m. from St. Arnold. (Tr. 357.) Forbes further testified that when he met with Risner that day, she appeared

"very excited and happy" about her decision to quit and to move to Las Vegas. (Tr. 357.)

C. Paul Williams' Transfer

Respondent concedes that Paul Williams was a highly visible union proponent working in the Benteler plant's door beam department. (Tr. 112, 256, R. Br. 21.) He distributed union hats and buttons at breaks, wore union clothing and also drafted the "plantation letter," which charged the Respondent with giving special treatment to certain employees. (Tr. 112, R. Exh. 1.)

In April 1995, less than a month after the hearing on Respondent's objections hearing to the elections,² Williams was transferred from cell 4 to cell 13 in the door beam department. (Tr. 116.) He was transferred back to the main floor area 3 months later, from cell 13 to cell 9. (Tr. 120.) Williams concedes that the work duties were basically the same at the various cells and that he knew that he was prohibited from engaging in any union activity during working time. (Tr. 131.) Nevertheless, he testified that the transfer to the more isolated cell 13 was not only unwarranted and unpleasant but also that it arose out of his support for the Union, "[B]ecause I didn't see anyone, talked to, or whatever, you know, because I was isolated in the back. I saw the less people, just the people that was back there." Both supervisors offered differing reasons for the transfer. St. Arnold maintained that the decision was based on "regular routine rotation (Tr. 256)":

Well, basically it's up to the supervisor's discretion. We like to make transfers to different cells every now and then to get more experience through different part numbers and different cells.

According to Williams' testimony, St. Arnold told him that "everybody was getting moved," when in fact, only he and another employee were moved. (Tr. 117.) Unlike St. Arnold, Forbes saw the transfer from cell 4 to cell 13 as a response to a specific request made by Don Getsinger, a supervisor (Tr. 362), "Don Getsinger, who is our superintendent, had asked Cory and myself to provide a level two operator to weld cell number 13."

In July 1995, Williams was transferred again. He testified that this second transfer was also ordered by management, so that he could be watched more closely from the supervisor's desk. Williams was moved from cell 13 to cell 9, which was less than 20 feet away from the supervisor's desk. (Tr. 120.)

The Respondent denies any improper motives for the second transfer. According to both supervisors, the second transfer was made pursuant to Getsinger's request for another, better trained operator at cell 13. (Tr. 258, Tr. 362.) Yet, Williams was originally transferred to cell 13 to "help out down there (Tr. 256)," because he was a level-two operator who was "very proficient on the robots." (Tr. 362.)

Williams inquired about his frequent transfers, in particular the one from cell 13. Jim Warren, the cell 13 supervisor, explained initially that "level two operators" were needed. When Williams said that he was a level-two operator, War-

ren stated that he "just needed some fresh blood back there." (Tr. 120.) Yet Williams had been in cell 13 for only 3 months. He assured Williams that it was not because of his passing out union hats.³ (Tr. 122.)

In sum, in a 4-month period following the objection hearings, Paul Williams was transferred twice at Benteler Industries. After 9 months at cell 4, he was moved to the more isolated cell 13 because of his skills. Within a few months, he was transferred again because of his apparent lack of skills.

D. Dennis French's Speech

During the union election campaign, Respondent campaigned heavily against the Union at the plant. Besides providing antiunion buttons and circulating antiunion literature, Respondent also held meetings with the employees. Immediately prior to the elections, on February 14, 1995, Dennis French, general manager of the plant for over 2 years, held an employee meeting to discuss his position.

According to French, he read a speech verbatim to the employees in all three shifts (Tr. 299, R. Exh. 4):

I apologized in advance for having to read from a prepared text, because I wanted to make sure that my message was consistent and the same on each shift that I was going to be discussing what was in the text. (Tr. 299.)

However, Daniel Hemsall, an employee during the first shift, testified that during their meeting, French deviated from plant closure if the Union were selected.⁴ (Tr. 143.) French encouraged his audience to vote against the Union and made the following references about plant closings (R. Exh. 4):

They thrive on conflict, and that's why their record is so bleak. All the way from the 100s of closed plants costing hundreds of thousands of UAW members their jobs, to the millions of dollars in lost wages and customer disruption as a result of UAW strikes. It's been my experience that they take your money, take care of the leaders and forget the members.

That is precisely why we don't want to see a union like the UAW at Benteler.

We know the impact the union will eventually have on our customers and our ability to compete. Not only have we spent the last several weeks demonstrating this union's record in this regard, personally many of us have lived these experiences at other companies we worked at before Benteler.

For the record, I lived through a six month UAW strike at International Harvester. I drove through picket lines. I have stared directly down a gun barrel, seen bricks held in hands. I watched empty beer bottles be thrown in an effort to damage our cars, causing punctured tires on the vehicles.

That six month strike was one of the primary reasons International Harvester closed plants in Ft. Wayne,

² At the objection hearings, one of the pieces of evidence was the "plantation letter" authored by Williams, which attacked the special treatment of management towards certain employees.

³ Jim Warren did not testify at the trial, and I have no basis to question Williams' recollection of their conversation.

⁴ I credit French's forthright testimony that apart from some introductory remarks, he did not deviate from his proposed text.

Memphis and Quad Cities. It cost thousands of UAW members their jobs. If for no other reason, what I saw and lived through during that six month UAW strike is why I am committed to being free of an organization like the UAW at Benteler. From what I saw, the UAW is at the heart of conflict. A strike often fosters violence and vandalism. The conflicts brought on by a strike control and influence people just like you. No one here needs what the UAW brought to the people at International Harvester.

E. *The Unilateral Changes*

On April 12, the Company reduced the number of employees assigned to certain cells or working areas without giving prior notice to the Union, which had been certified as the Respondent's employee's bargaining representative. As alleged in the complaint, the record shows that prior to April 12, each cell was staffed by three employees, two operators and a stacker. The operator's function was to process certain parts to be welded. The stacker handled the unfinished parts, moving them from a large basket into smaller baskets. The change affected four cells when management reduced the stacker's function by assigning one stacker to two cells, so that the number of employees for two cells was reduced from six to five. This change affected not only the method of operation for the stacker who was now responsible for two cells and four operators as opposed to the prior assignment to two operators and one cell, but also the breaks. Instead of three separate breaks, one for each employee per cell, the Respondent added two breaks per two cells so that each of the five employees could take their morning breaks.

The Respondent initiated these changes without prior notice to the Union and without offering to bargain with it. The Respondent admits the changes and argues that they were not sufficiently substantial so as to violate Section 8(a)(5) of the Act.

III. DISCUSSION

The union campaign that resulted in the Union's certification revealed management's antiunion sentiment. Yet the record supports only a few of the allegations in the complaint. The antiunion animus is found in the speech to the employees made by Dennis French, general manager and the highest executive at the Benteler Hall Street plant. He spoke to the assembled employees from a prepared text, exhorting them to vote against the Union and, citing his personal experiences, referred to plant closings and strikes. Out of 60 employees on the second shift who heard the speech only Dennis Hemsall testified that French occasionally deviated from the prepared text and "speaking off the cuff" implied that the Company would close the plant because of the Union. I have credited French's testimony and examined his speech and find that he did not exceed the 8(c) provision of the Act because he recalled his personal prior experiences without threatening any reprisals or impliedly threatening similar consequences at Benteler Industries. French repeatedly assured the employees that he would respect their right to disagree and their right to decide the issue. These are statements that indicate the Respondent has not predetermined any retaliation. To the contrary, employees were assured thereby of the Employer's tolerance.

Most of the other allegations in the complaint were based on the testimony of two members of the Risner family, Daniel Hemsall and Paul Williams, a prominent union supporter. Based on the demeanor of the witnesses and the implausible and conflicting testimony provided by the Risners, notably that of Larry Risner, I find that the record simply does not support the numerous 8(a)(1) allegations, nor the alleged unlawful discharges of Kelly Risner and Tanya Sanchez. To be sure, while I was not impressed by the testimony of Mark Forbes and have therefore some lingering doubts about the reliability of his testimony, the burden was on the General Counsel to establish a prima facie case. The General Counsel accomplished this only with regard to those allegations that are based on the credible testimony of Paul Williams, and some of the observations of Daniel Hemsall about the changes in the employees' working conditions.

More specifically, according to Kelly's testimony, she had no intention to quit on May 9, 1995: "I had made up my mind that morning that I wasn't going to let him get to me, I wasn't going to let him push me to quit my job, *I liked my job*, you know [emphasis added]." (Tr. 45.) She then stated that while nothing changed between her and Mark Forbes on that day, she felt she had to quit. Acknowledging that she "liked her job," Kelly's testimony is contradictory, when she continued to testify, "That's what the problem was, it wasn't any different, you know. He was on [me] just like he always was and I just can't take a job like that, couldn't take it." (Tr. 45.) Similarly Larry Risner's and Sanchez' arrival at Benteler during lunchtime further weakened her story. Kelly testified that she told Forbes she was going to Las Vegas, so as not to give him the satisfaction of knowing that he successfully harassed her into quitting, and thereby constructively discharged her. This explanation is incredible, in light of the family's lunchtime visit to the plant, and the testimony of Kelly's coworkers. Both Patty DeRuiter and Noba Reynolds testified to hearing about Kelly's plans to go to Las Vegas, and both remember Kelly's demeanor to be happy that day. St. Arnold's and Forbes' testimony disputes Risner's testimony about the time of her notification to leave her job. Moreover, Larry Risner's claim that he happened to arrive at the plant to have lunch with his wife but ended up driving his daughter home is suspect. His refusal to submit any documents pursuant to a subpoena, stating (Tr. 159), "I do and I'm not going to no, because I have nothing to do with Benteler," shows that he preferred to hide the true facts. Risner admitted that he had the relevant documents in his possession but refused to produce them even though his wife and two daughters were employees of the Company. Risner also admitted that he took numerous trips during a 6-month period in 1995 but testified that he had no documents in his possession such as plane tickets, hotel receipts, or any travel related documents. Admitting that he had moved from his residence, he testified that he had no documents such as rental agreements or sales contracts for his house. His totally unreliable and incredible testimony not only rendered Kelly Risner's scenario of a constructive discharge unconvincing, but it supported the testimony of several other witnesses that Risner had planned to go to Las Vegas and intended to leave her job for that reason.

Willing to misrepresent her true intentions for leaving the Company's employment, was she nevertheless honest about

the verbal harassment by her supervisor, Mark Forbes. Again, based on her demeanor as a witness, as well as the contradictory and implausible scenario of the various occurrences that she described, I find her statement inherently unreliable. I would therefore dismiss all the allegations based on her testimony, which is the bulk of the 8(a)(1) conduct as well as the constructive discharge allegation. I am convinced that Risner did not leave her job because of the Respondent's working conditions, but because she had decided to go to Las Vegas. She admitted her intentions to DeRuiter, Reynolds, Forbes, and St. Arnold. To find otherwise would fly in the face of the generally unbiased testimony of at least two of her coworkers and credit her own inconsistent statements, as well as the obviously implausible statements made by her father. Moreover, the record does not support the General Counsel's position that her union activity, if any, was in any way related to her decision to leave her employment.

Similarly, there is no evidence in the record that Tanya Sanchez engaged in any union activity. She and her sister were perceived by the other employees as favorites of management during the initial stage of the union campaign, hence the veiled reference to them in the "plantation" letter. Conceding that both employees had not engaged in prounion activities, the General Counsel nevertheless argues that Sanchez' discharge violated Section 8(a)(3) of the Act, because Forbes identified her as a union supporter. The record simply does not support the argument. That suggestion is supported by Kelly Risner's testimony that Forbes was afraid that firing both sisters because of their absences would have repercussions with the Union. Even if that statement had been made, it would be a giant leap to a conclusion that Sanchez was perceived as a union supporter. To be sure, the testimony of St. Arnold and Forbes were at times not always consistent. They nevertheless agreed that her absences, her socializing, and her mistakes at work were the basis for concluding that she had failed her probationary employment period. This Employer was certainly free to discharge an employee for those reasons and based on my consideration of the record, there is no basis to suggest that it was union related.

Turning now to the transfer of Paul Williams from one work station to another, the evidence suggests that his union activities precipitated the Respondent's decision. Williams drafted the "plantation" letter about 1 month prior to his transfer from cell 4 to cell 13 located in a remote area of the working area. In July he was transferred to cell 9, located close to the supervisor's desk. At that time he had passed out union hats. It is apparent that the Respondent attempted to isolate Williams initially to a more remote area where his ability to communicate with other employees was limited. The subsequent move appeared to enable the Respondent to watch him more closely. St. Arnold admitted that he responded to Williams' inquiry about being observed by management, "It's not Mark, it's my turn today." (Tr. 115, 259.)

Williams testified that he was watched more closely during the period of his union activity. For example, Forbes asked him where he had been on a day when he had gone to the bathroom. Forbes had even timed the duration of his absence, saying that Williams had been away from his work for as long as 15 minutes. Forbes testified that he had been looking for Williams because he needed him for an assign-

ment to one of the working cells but could not find Williams. Another supervisor, Jim Warren, commented to Williams one day that he had done nothing wrong by passing out union hats, because it was done on his own time.

Even though it is management's prerogative to watch their employees, the record supports Williams' testimony that management took a greater interest in him than usual, because of his prominent union role. Warren's comment shows that it was union related. In addition, the evidence shows that his transfer was related to his union activity. The Respondent's argument that the transfers were prompted by sound business judgments or would have been made even in the absence of his union activity is not persuasive. St. Arnold and Forbes provided not only inconsistent reasons, but the reasons were implausible. The General Counsel's *prima facie* case was not effectively rebutted by the Respondent. *Wright Line*, 251 NLRB 1083 (1980). St. Arnold testified that their transfers were routine, while Forbes offered explanations which, as already stated were contradictory.

I accordingly find that the Respondent unlawfully created the impression that its employees were under surveillance and transferred of Paul Williams for discriminatory reasons in violation of Section 8(a)(1) and (3) of the Act.

The final issue is the unilateral changes in the working conditions of several unit employees without notice to the Union. The record shows that the Union (UAW) was certified as the exclusive bargaining representative of all full-time and regular part-time production employees at the Benteler plant, which included the operators and stackers in cells 4, 6, 9, and 11. Not only were the actual working conditions changed by reducing the number of stackers assigned to each cell, but the breaks for all employees in the working cells changed as well. The Respondent has admitted that these changes were made without notifying the Union. The Respondent argues that these changes were not sufficiently material or substantial to require bargaining. I disagree, the job changes were significant and are considered mandatory subjects of bargaining. I accordingly find that the Respondent violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. Benteler Industries, Inc. with offices and place of business in Grand Rapids, Michigan, is engaged in the manufacture and nonretail sale of automobile metal components. With sales of products in excess of \$50,000 directly to customers outside the State of Michigan, the Respondent is admittedly an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, International Union United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Union was certified on March 20, 1996, as the exclusive-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees, including automation technicians, robotics technicians, floor inspectors, layout inspectors, the quality assurance secretary, materials records clerks, shipping and receiving employees and clerks, and leadpersons, employed by the Employer at

its 320 Hall Street, S.W., Grand Rapids, Michigan facility at its warehousing facility located at 500 44th Street, S.W., Wyoming, Michigan; BUT EXCLUDING all office clerical employees, guards and supervisors as defined in the Act and any employees of temporary work entities.

4. By reducing the number of employees per work cell and changing the break schedules for employees in the unit and thereby changing their terms and conditions of employment without notice to the Union and affording it the opportunity to bargain, the Respondent violated Section 8(a)(1) and (5) of the Act.

5. By creating the impression among the employees that their union activities were under surveillance, the Respondent violated Section 8(a)(1) of the Act.

6. By transferring its employee Paul Williams from one working cell to another, because of his union activities, the Respondent discriminated against him in violation of Section 8(a)(1) and (3) of the Act.

7. All other objections have not been substantiated.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Having found that the Respondent unilaterally changed the terms and conditions of its unit employees, the Respondent will be ordered to rescind the changes and bargain on request with the Union. Having further found that the Respondent unlawfully transferred Paul Williams from one working station to another, the Respondent must be ordered to return the employee on his request to the former working cell.

On these findings of fact, conclusions of law, and on the entire record, I issue the following recommended⁵

ORDER

The Respondent, Benteler Industries, Inc., Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Creating the impression that its employees are under surveillance because of their union activities.

(b) Changing the work cell assignments of its employees or transfer them because of their union activity.

(c) Unilaterally reducing the number of employees at the work cells or changing their working conditions without prior notice to the Union and affording it the opportunity to bargain.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On his request, return its employee Paul Williams to his former work cell.

(b) Rescind the unilateral changes made in the employees' working conditions and restore the number of employees to the work cell.

(c) On request, bargain with the Union as the exclusive collective-bargaining representative of the following appropriate unit and, if an agreement is reached, embody the terms and conditions in a signed agreement.

All full-time and regular part-time production and maintenance employees, including automation technicians, robotics technicians, floor inspectors, layout inspectors, the quality assurance secretary, materials records clerks, shipping and receiving employees and clerks, and leadpersons, employed by us at our 320 Hall Street, S.W., Grand Rapids, Michigan facility at our warehousing facility located at 500 44th Street, S.W., Wyoming, Michigan; BUT EXCLUDING all office clerical employees, guards and supervisors as defined in the Act and any employees of temporary work entities.

(d) Within 14 days after service by the Region, post at its facility in Grand Rapids, Michigan copies of the attached notice marked "Appendix."⁶ Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 31, 1995.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

⁵If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT create the impression that our employees are under surveillance because of their union activities.

⁵If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

WE WILL NOT change the work cell assignments of our employees or transfer them because of their union activities.

WE WILL NOT reduce the number of employees at the work cells or change their working conditions without notice to the Union and affording it the opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on his request, return Paul Williams to his former work cell.

WE WILL rescind the unilateral changes made in our employees' working conditions and restore the number of employees to the work cell.

WE WILL, on request, bargain with the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) AFL-CIO as the exclusive bargaining representative of the following unit and, if an agree-

ment is reached, embody the terms and conditions in a signed agreement:

All full-time and regular part-time production and maintenance employees, including automation technicians, robotics technicians, floor inspectors, layout inspectors, the quality assurance secretary, materials records clerks, shipping and receiving employees and clerks, and leadpersons, employed by us at our 320 Hall Street, S.W., Grand Rapids, Michigan facility at our warehousing facility located at 500 44th Street, S.W., Wyoming, Michigan; BUT EXCLUDING all office clerical employees, guards and supervisors as defined in the Act and any employees of temporary work entities.

BENTELER INDUSTRIES, INC.